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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAN DIEGO REGIONAL CENTER,

Plaintiff and Respondent,

v.

OFFICE OF ADMINISTRATIVE  
HEARINGS,

Defendant and Respondent;

KIMBERLEE OAKLEY, as Conservator,  
etc.,

Real Party in Interest and  
Appellant.

D073829

(San Diego County  
Super. Ct. No. 37-2017-00028655-CU-  
WM-CTL)

APPEAL from an order of the Superior Court of San Diego County,

Judith F. Hayes, Judge. Reversed with directions.

Kimberlee Oakley, in pro. per., for Real Party in Interest and Appellant.

Bridgette A. Webster for Plaintiff and Respondent.

No appearance for Defendant and Respondent.

I.

INTRODUCTION

The Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. Code, § 4500)<sup>1</sup> authorizes entities called "regional centers" (§ 4620) to provide various "services and supports" (§ 4512, subd. (b)) to developmentally disabled individuals of all ages. If a recipient of services is dissatisfied with a regional center's decision with respect to services or supports, he or she may request a "fair hearing" to resolve the dispute. (§ 4710.5.)

J.G. is an adult who has several severe developmental disabilities and receives services from plaintiff San Diego Regional Center (Regional Center). J.G.'s conservator and mother, real party in interest Kimberlee Oakley, sought a fair hearing concerning her requests pertaining to a residential health care trailer located on the family's property, which the family had purchased and in which J.G. would reside. At the fair hearing, Oakley presented evidence in support of her requests, including evidence pertaining to the nature of the medical necessity and appropriateness of the modifications to the trailer that she was seeking. Regional Center maintained that it was unwilling to grant the requests because the health care trailer would purportedly violate a San Diego County zoning ordinance.

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<sup>1</sup> Unless otherwise specified, all subsequent statutory references are to the Welfare and Institutions Code.

After the hearing, an administrative law judge (ALJ) from defendant Office of Administrative Hearings (OAH)<sup>2</sup> ordered Regional Center to fund an ADA-compliant ramp<sup>3</sup> and an air conditioner for the trailer. The OAH decision also directed Regional Center to conduct an occupational therapy/physical therapy (OT/PT) assessment<sup>4</sup> with respect to several of Oakley's other requests.<sup>5</sup> The ALJ rejected Regional Center's zoning argument.

Regional Center filed a petition for writ of administrative mandamus in the trial court seeking to set aside the OAH decision on grounds different from the zoning argument that it had advanced in the administrative proceedings. The trial court granted Regional Center's petition and vacated the OAH decision on the ground that a statute from the Lanterman Act that the ALJ had cited in support of its decision to order Regional Center to fund the ramp and the air conditioner (§ 4685, subd. (c)) applies only to minors, and J.G. is an adult.

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<sup>2</sup> The OAH has not appeared in this appeal.

<sup>3</sup> Americans with Disabilities Act (ADA; 42 U.S.C. § 12101 et seq.).

<sup>4</sup> Regional Center performs these assessments to determine the need and appropriateness of various services and supports that it provides to its clients.

<sup>5</sup> The ALJ conditioned these orders on proof of the issuance of a valid permit issued by the County of San Diego for the health care trailer. This condition is not relevant to this appeal.

On appeal, Oakley claimed that the trial court erred in interpreting section 4685, subdivision (c) as applying only to minors.<sup>6</sup> After reviewing the record, we requested supplemental briefing from Regional Center concerning whether it had adequately preserved, in the administrative proceedings, the claims that it raised in its writ petition. Having considered Regional Center's supplemental brief and the administrative record, we conclude that the trial court erred in granting Regional Center's writ petition.

Despite knowing J.G.'s age and the nature of Oakley's requests, Regional Center never argued in the administrative proceedings that it would be improper for the ALJ to order it to fund the purchase of the ramp or the air conditioner on the ground that J.G. is an adult. Further, even assuming that the ALJ erred in relying on section 4685, subdivision (c) in directing Regional Center to purchase the ramp and the air conditioner, Regional Center does not dispute that these purchases could be ordered pursuant to section 4512, subdivision (b), which the ALJ also cited in its decision. Under these circumstances, the trial court erred in setting aside the ALJ's decision directing Regional Center to fund the ramp and the air conditioner. The trial court also erred in setting aside the ALJ's decision with respect to Oakley's request for an assessment pertaining to the other modifications to the trailer that she was seeking, since the ALJ did not rely on section 4685, subdivision (c) for this portion of its decision and Regional Center expressly conceded at the fair hearing that it was willing to perform the assessment. In

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<sup>6</sup> Oakley appears in this court, and appeared in the administrative proceedings, in propria persona.

addition, for reasons that we explain in part III.B, *post*, we further conclude that none of the alternative arguments that Regional Center raised in its writ petition has any merit.

Accordingly, we reverse the trial court's order and remand the matter with directions to deny Regional Center's writ petition.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *The administrative proceedings*

##### 1. *Oakley's fair hearing request*

In February 2017, Oakley, as J.G.'s conservator, filed a form entitled "Fair Hearing Request," in which she sought a hearing on her request that Regional Center conduct an OT/PT assessment for various modifications to a "Temporary Health Care Trailer."<sup>7</sup>

The OAH set a hearing for April 2017.

##### 2. *Oakley's prehearing brief*

Prior to the hearing, Oakley filed a brief outlining the issues that she wanted to address at the hearing. Oakley explained that she requested an immediate determination with respect to whether Regional Center should be ordered to fund an ADA-compliant ramp and an air conditioner to be installed in a residential health care trailer in which J.G. intended to reside on his family's property. Oakley argued that the ramp and the air conditioner were an "urgent matter," and that these items were critical in "ameliorat[ing]

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<sup>7</sup> The form contains a small space for the claimant to explain the nature of the request. Accordingly, Oakley's fair hearing request form provided limited details with respect to the nature of the request.

the physical and cognitive effects," of J.G.'s disability. In the alternative, Oakley requested that Regional Center be ordered to conduct an assessment to determine J.G.'s need for the ramp and the air conditioner.

Oakley also requested that Regional Center be ordered to perform an OT/PT assessment to determine the need for various modifications to the health care trailer including:

- "1. Widening doors in [trailer,]
- "2. Relocating windows for safety[,]
- "3. Concrete walkway to [trailer,]
- "4. Enclosed porch[, and]
- "5. Pocket door[.]"

### 3. *The hearing*

In April 2017, an ALJ from the OAH held an evidentiary hearing. At the hearing, as discussed in detail in part II.A.4, *post*, Oakley presented extensive evidence in support of her requests, including testimony pertaining to the health care trailer and J.G.'s need for various equipment and modifications to the trailer.<sup>8</sup> Oakley also lodged numerous documents in the administrative record, the bulk of which pertained to her interactions with Regional Center pertaining to the trailer as well as evidence documenting J.G.'s need for the trailer and the requested modifications.

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<sup>8</sup> During Oakley's presentation of witness testimony pertaining to the medical necessity of the air conditioner and the ramp, Regional Center's counsel stated that the agency was not contesting the need for these items, stating, "[Y]ou don't need to justify it at this point. . . ."

Regional Center's North County office manager, Gabriella Ohmstede, testified that the trailer would violate a San Diego County zoning ordinance and that the agency was therefore unwilling to grant Oakley's requests.

At no point during the administrative proceedings did Regional Center present any argument or evidence indicating that it was refusing to grant Oakley's requests on the ground that J.G. is an adult. On the contrary, Regional Center acknowledged that it was authorized to fund the ramp and the air conditioner for J.G.'s use. During his opening statement, Regional Center's counsel stated the following:

"[T]he air conditioner that [J.G.'s] asking for, we would do that as adaptive equipment. And the ADA ramp would be considered adaptive equipment."

In addition, on direct examination, Regional Center's counsel asked Ohmstede several questions about Regional Center's Purchase of Service Standards (PSS).<sup>9</sup> Counsel asked Ohmstede, "[J.G.] has asked for an assessment and ultimately for us to fund an ADA ramp and fund air conditioning. Do you see an area where that might be included under here?" Ohmstede responded, "We would consider those things under the umbrella of . . . durable medical equipment, assistive technology." The PSS provides that Regional Center may purchase "Assistive Technology Devices," which include "devices that allow persons with a developmental disability to function more effectively in their environment." Further, the PSS states, "Assistive technology devices are available for *children and adults* through a number of resources." (Italics added.)

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<sup>9</sup> The PSS outlines the services and supports that Regional Center may provide for its clients and the standards that it will utilize to obtain such services and supports.

Regional Center conceded that it was willing to provide an OT/PT assessment for *all* of the items that Oakley was requesting, to the extent that its zoning argument was incorrect:

"[ALJ]: All right, just so I'm clear on Regional Center's position, it is that the ordinance—the San Diego County ordinance doesn't permit the person with medical needs to reside in the trailer?

"[Regional Center's counsel]: That's our reading of it.

"[ALJ]: That's the position. And if that's not the case, then Regional Center would be willing to do the OT/PT assessment for all of the items that have been requested?

"[Regional Center's counsel]: Yeah. We can—"

Regional Center lodged a series of exhibits, which included J.G.'s Individual Program Plan (IPP),<sup>10</sup> various laws and ordinances, and the PSS.

#### 4. *The OAH decision*

In May 2017, the ALJ issued a 10-page final decision on behalf of the OAH with respect to whether Regional Center should be ordered to fund an ADA-compliant ramp and air conditioner for J.G.'s health care trailer and/or provide an OT/PT assessment with respect to these modifications to the trailer.

At the outset of the decision, the ALJ made a series of factual findings. The ALJ found that J.G. is a 28-year-old conserved male who qualifies for Regional Center services based on his severe disabilities, including seizures, intellectual disabilities, and autism. According to the ALJ, J.G. requires "two, and sometimes three, caregivers to

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<sup>10</sup> As discussed in part III.A.1.a, *post*, section 4646 mandates the development of an IPP for all persons who are eligible to receive Regional Center services. (*Id.*, subd. (c).)



assist in keeping him safe . . . ." The ALJ explained that Oakley requested that Regional Center fund the following modifications to a health care trailer: an ADA-compliant ramp, an air conditioner, a paved walkway from the trailer to the main house where J.G.'s family resides, removal of walls in the trailer to create a barrier free kitchen, installation of a pocket doorway, widening of a standard door, and enclosure of a porch. The ALJ explained that Oakley requested that Regional Center immediately fund the purchase of the ramp and the air conditioner and that it also fund an OT/PT assessment to determine the need for the additional modifications.

The ALJ outlined Regional Center's objection to Oakley's requests in relevant part as follows:

"[Regional Center] believes that the San Diego County Ordinance governing health care trailers only permits a health care provider or family member of a person with a disability to reside in the trailer. Based on its reading of the statute, [J.G.] would not legally be permitted to reside in the trailer. [Regional Center] agrees that if claimant can legally reside in the trailer, it will fund the requested OT/PT assessments."

The ALJ stated that Oakley had presented the testimony of a licensed contractor who installs health care trailers, who explained that the County of San Diego "permits the existence of [health care trailers] if a blood relative of the property's resident has a certification from a California licensed physician." Oakley also presented the testimony of two of J.G.'s caregivers, as well as that of his stepfather, who testified as to the need for the modifications to the trailer. In addition, Oakley presented documentation from two physicians establishing the medical necessity for the ramp and the air conditioner.

The OAH decision contains a five-page section entitled "Legal Conclusions." In this section of the decision, the ALJ cites numerous provisions of the Lanterman Act, including section 4512, subdivision (b), which defines various "services and supports," that a Regional Center may provide to its clients. Although not specifically quoted in the decision, this section provides that among the services and supports that a Regional Center may provide its clients are "adaptive equipment and supplies." (§ 4512, subd. (b).) Another portion of the Legal Conclusions section of the OAH decision discusses the San Diego County zoning ordinance on which Regional Center based its objection to Oakley's requests.

The ALJ ultimately concluded, "[Regional Center's] contention that [J.G.] would be illegally occupying the trailer is rejected." The ALJ explained further that the County of San Diego is responsible for enforcing its zoning laws and that a valid permit would constitute "prima facie evidence that the trailer is in conformance with the law . . . ."

With respect to Oakley's specific requests, the ALJ stated:

"A preponderance of evidence established that an ADA-compliant ramp and air conditioning unit for the trailer are special adaptive equipment that are required for [J.G.] to be able to use the trailer. An OT/PT assessment is not required to establish this need, as the evidence clearly established their necessity given [J.G.'s] limitations in mobility and self-injurious behavior. The purchase of these items is authorized under Welfare and Institutions Code section 4685, subdivision (c)(1). Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer [citation], [Regional Center] shall fund these items in accordance with its purchase of service standards.

". . . As for the remaining requested items, claimant's request for an OT/PT assessment was reasonable and [Regional Center] agreed that it would conduct the assessments if it was determined that the health

care trailer complied with local zoning laws. Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer [citation], [Regional Center] shall fund an OT/PT assessment to address claimant's requested modifications to the trailer and the paved walkway to the main house."

In a section of the decision entitled "Order," the ALJ states the following:

"Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer [citation], [Regional Center] shall fund an ADA-compliant ramp and air conditioning unit in accordance with its purchase of service standards. Additionally, upon proof of a valid permit issued by the County, [Regional Center] shall fund an [OT/PT] Assessment to determine the necessity of physical modifications to the trailer and a paved walkway from the trailer to the main house. The valid permit shall be a condition precedent to [Regional Center's] funding of the ADA-compliant ramp, air conditioning unit, and OT/PT assessment."

*B. Regional Center's petition for writ of administrative mandamus*

Regional Center filed a petition for writ of administrative mandamus requesting that the trial court set aside the OAH decision. In its petition, Regional Center contended that the OAH decision should be set aside because: the ALJ ordered Regional Center to fund the ramp and air conditioner without an assessment; the ALJ erred in relying on section 4685, subdivision (c) to order Regional Center to fund the ramp and the air conditioner and to conduct an assessment with respect to Oakley's other requests because section 4685, subdivision (c) applies only to minors and J.G. is an adult; "regional centers are vested with the authority to determine appropriate services needed by an individual"; the ALJ erred when he ordered Regional Center to "fund and/or provide [an] OT/PT [a]ssessment for [Oakley's] property requests, whereas regional centers are only authorized to approve, coordinate, and fund services and supports"; the decision is wrong

as a matter of law to the extent it determined that "the air conditioner, ADA-ramp, and other property and property improvement requests to be 'adaptive equipment,' that regional centers are authorized to approve and fund for consumers."<sup>11</sup>

After briefing and an unreported hearing,<sup>12</sup> the trial court issued an order granting the petition for writ of administrative mandate and vacating the "entire decision" of the OAH. In its order, the trial court quoted a portion of section 4685, and emphasized that the statute refers to "children," in several places.<sup>13</sup> The trial court further noted, "The

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<sup>11</sup> In addition, the petition states that the OAH decision contains an error in outlining the parties' respective positions in that that the OAH decision states that "[Regional Center] noted that regional centers ordinarily fund extensive modifications to real or personal property," while the transcript of the administrative proceedings makes clear that the words "do not," should be inserted before the words "ordinarily fund." (Italics omitted.)

<sup>12</sup> The record contains a settled statement describing the hearing.

<sup>13</sup> The trial court quoted the following portion of section 4685:

"(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan. [¶] . . . [¶]

"(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

"(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan.

[ALJ] cited . . . section 4685 [, subdivision] (c) in coming to its decision. [Citation.]

[J.G.] is a 28[-]year-old conserved male. [Citation.] If the reference to child and children within this code, and the Lanterman Act in general, refers to those under the age of 18, then the code does not provide the OAH support for its decision."

After determining that section 4685, subdivision (c) does not apply to persons under the age of 18, the trial court concluded, "In light of the above, the court finds it is unnecessary to address [Regional Center's] other arguments as the entire decision will be vacated."

### *C. Oakley's appeal*

Oakley appealed the trial court's order granting the petition for writ of mandate. In her brief, filed in propria persona, Oakley claims that the trial court erred in granting the petition for writ of mandate. Oakley contends that the trial court improperly interpreted section 4685, subdivision (c) as applying only to minors.

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This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled. [¶] . . . [¶]

"[(5)] Nothing in this section shall be construed to encourage the continued residency of adult children in the home of their parents when that residency is not in the best interests of the person[.] (Welf. & Inst. Code, § 4685 . . . .)" (Boldface omitted.)

D. *Regional Center's supplemental brief*

While Oakley's appeal was pending, we issued a supplemental briefing order that stated in part:

"This court has carefully reviewed the administrative record as well as the record in the trial court. The primary issue raised by Regional Center during the administrative proceedings pertained to whether the health care trailer at issue was eligible for a permit under the relevant San Diego County [zoning] ordinance. Regional Center has not raised this zoning issue in the writ proceedings. Instead, Regional Center raised a host of issues in its writ petition that it did *not* raise in the administrative proceedings."

Specifically, we noted that Regional Center had *never* argued in the administrative proceedings that the equipment that Oakley sought could be provided only to children under age 18 and that in fact, Regional Center had *conceded* that it would provide all of the assessments that Oakley was requesting to the extent that its zoning argument were incorrect.

In light of this administrative record, we directed Regional Center to file a supplemental brief addressing the following issue:

" 'Whether this court should reverse the order granting the petition for writ of mandate and direct the trial court to enter a new order denying the petition on the ground that Regional Center failed to adequately preserve in the administrative proceedings the issues that it raised in its petition for writ of mandate?' "

Regional Center filed a supplemental brief in which it argued that section 4685 was not at issue in the administrative proceedings, that the statute became an issue only when the OAH issued a final decision relying on the statute, and that Regional Center should not be deemed to have forfeited an issue that did not arise until the OAH decision

was issued. Regional Center argued, in the alternative, that this court should consider whether section 4685 may be applied to adults as a pure issue of law, irrespective of any potential forfeiture.

### III.

#### DISCUSSION

A. *Even assuming that section 4685 applies only to minors, the trial court erred in vacating the OAH's decision on this ground*

We assume, strictly for purposes of this decision, that Regional Center is correct in arguing that section 4685 applies only to minors. However, even assuming that this is so, we conclude that the trial court erred in granting Regional Center's petition for writ of administrative mandamus on this basis.

1. *Governing law*

a. *Lanterman Act*

Under the Lanterman Act, the Department of Developmental Services, "selects nonprofit corporations known as 'regional centers' to determine what services should be provided to the developmentally disabled." (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 306 (*Harbor Regional Center*).) Regional centers develop IPPs for eligible persons through a process of individualized needs determination. (§ 4646.) Section 4648 of the Lanterman Act mandates that regional centers "shall conduct activities," to "achieve the stated objectives" of their clients' IPPs, including "[s]ecuring needed services and supports." (*Id.*, subd. (a).) The

Lanterman Act refers to the term "services and supports," in numerous places throughout the statutory scheme, including in sections 4512 and 4685.

Section 4512, subdivision (b) defines " '[s]ervices and supports for persons with developmental disabilities' " as meaning "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives." Section 4512, subdivision (b) also provides that "services and supports" in an IPP may include "adaptive equipment and supplies . . . ."

As noted in footnote 13, *ante*, section 4685 provides that regional centers may provide various services and supports "designed to assist families that are caring for their children at home," (*id.*, subd. (c)(1)) including "special adaptive equipment . . . ." (*Ibid.*)

" 'Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of [a regional center] which he or she believes to be . . . not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing' before (DDS). [Citations.] DDS has designated the OAH as the independent hearing officer for the appeal/fair hearing process. [Citations.] A decision by the OAH is binding as to administrative proceedings, and a losing party may seek review of the decision by petition for writ of administrative mandate to the superior court. [Citation.]" (*Harbor Regional Center, supra*, 210 Cal.App.4th at p. 319.)



b. *Relevant principles of administrative mandamus*

Code of Civil Procedure section 1094.5 outlines the law governing petitions for writ of administrative mandamus. Code of Civil Procedure section 1094.5, subdivision (b) outlines the basis upon which a trial court may grant such a writ and provides:

"The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

The law is well established that a party's failure to raise an issue in an administrative proceeding precludes the party from raising the issue in a petition for writ of mandate. (See, e.g., *Danser v. Public Employees' Retirement System* (2015) 240 Cal.App.4th 885, 891.) More specifically, "In administrative mandamus actions . . . appellate review is limited to issues in the record at the administrative level." (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1019 (*City of Walnut Creek*), citation omitted.) "The rule compelling a party to present all legitimate issues before the administrative tribunal is required in order to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play." (*Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 383.)

2. *Application*

The OAH decision directs Regional Center to take two actions: (1) fund the purchase of an ADA-compliant ramp and air conditioner in accordance with Regional Center's purchase standards; and (2) fund an assessment to determine the need for

Oakley's other requested modifications to the trailer.<sup>14</sup> Even assuming that section 4685 applies only to minors, the trial court erred in vacating the OAH decision directing Regional Center to take these two actions for the following reasons.

a. *ADA-compliant ramp and air conditioner*

Oakley requested in her prehearing brief in the administrative proceeding that the OAH order Regional Center to fund the purchase of an ADA-compliant ramp and air conditioner. The record is clear that Regional Center understood that J.G. was over the age of 18.<sup>15</sup>

Notwithstanding that Oakley requested that Regional Center fund the ramp and air conditioner for her adult son and conservatee, Regional Center does not dispute that it *never* argued in the administrative proceedings that it was unwilling or unable to purchase the ramp or air conditioner for J.G. because he is over the age of 18. Thus, even assuming that section 4685 applies solely to minors and that the ALJ improperly cited section 4685, subdivision (c) in the OAH decision, since J.G.'s minority was not an *issue* raised in the administrative proceedings, Regional Center was not entitled to a writ vacating the OAH decision on this ground. (See *City of Walnut Creek, supra*, 101 Cal.App.3d at p. 1019 ["It is fundamental that the review of administrative proceedings

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<sup>14</sup> As noted in part II.A.4, *ante*, the ALJ conditioned Regional Center's obligations on the presentation of proof of a valid permit issued by the County of San Diego for a temporary health care trailer. Regional Center did not raise any argument pertaining to this requirement in either the trial court or this court.

<sup>15</sup> Among numerous documents establishing this undisputed fact are Oakley's fair hearing request form, which included J.G.'s birthdate. Regional Center also offered J.G.'s IPP in evidence at the hearing. The IPP also contained J.G.'s birthdate.

provided by section 1094.5 of the Code of Civil Procedure is confined to the *issues* appearing in the record of that body as made out by the parties to the proceedings' "].)

This principle carries particular force in this case since Regional Center has *never* argued, in the administrative proceedings, the trial court, or this court, that the law prevents it from purchasing an ADA-compliant ramp and air conditioner for J.G. On the contrary, Regional Center repeatedly acknowledged in the administrative proceedings that it had the authority to purchase the ADA-compliant ramp and air conditioner for J.G. (See pt. II.A.3, *ante*.)

Regional Center's acknowledgement was well-founded. The Lanterman Act permits Regional Center to purchase the air conditioner and the ADA-compliant ramp for J.G. pursuant to section 4512, subdivision (b), which authorizes regional centers to purchase "adaptive equipment and supplies" for their clients. Regional Center acknowledges in its supplemental brief, "Section 4512 applies to all ages of individuals with developmental disabilities." Under these circumstances, even assuming that the ALJ erred in citing 4685, subdivision (c) to support its order directing Regional Center to purchase the air conditioner and ADA-compliant ramp for use by J.G., since the same relief was available pursuant to section 4512, subdivision (b),<sup>16</sup> Regional Center did not establish any "prejudicial" error as is required to support the granting of a writ of administrative mandamus. (Code Civ. Proc., § 1094.5, subd. (b).)

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<sup>16</sup> The ALJ noted that section 4512, subdivision (b) defines " 'services and supports,' " and quoted section 4512, subdivision (b) in its order. Regional Center expressly acknowledged in its brief in the trial court that the ALJ also relied on section 4512, subdivision (b) in ordering it to fund the purchase of the ramp and air conditioner.

In sum, even assuming that Regional Center is correct that section 4685, subdivision (c) applies only to minors,<sup>17</sup> the trial court erred in vacating the ALJ's decision directing Regional Center to purchase an ADA-compliant ramp and air conditioner for J.G.

b. *Assessment for remaining modifications*

The trial court also erred in concluding that its interpretation of section 4685, subdivision (c) supported its decision to vacate the OAH's decision insofar as the decision directed Regional Center to perform an OT/PT assessment with respect to Oakley's other requests.

To begin with, the OAH decision did not rely on section 4685, subdivision (c) in ordering these assessments. Rather, the OAH reasonably relied on Regional Center's express concession that it was willing to perform the assessments to the extent that its zoning argument was not well-taken.<sup>18</sup> (See *Fassberg Construction Co. v. Housing*

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<sup>17</sup> We emphasize that we express no opinion on this question.

<sup>18</sup> As noted in part II.A.3, *ante*, near the end of the hearing, the ALJ asked Regional Center's counsel whether Regional Center would be willing to perform the OT/PT assessments if its zoning argument were rejected. Regional Center's counsel responded in the affirmative.

As noted in part II.A.4, *ante*, the OAH's decision stated:

"As for the remaining requested items, claimant's request for an OT/PT assessment was reasonable and [Regional Center] agreed that it would conduct the assessments if it was determined that the health care trailer complied with local zoning laws. Upon proof of a valid permit issued by the County of San Diego for a temporary health care trailer [citation], [Regional Center] shall fund an OT/PT assessment to address claimant's requested modifications to the trailer and the paved walkway to the main house."

*Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 752 ["an oral statement by counsel in the same action is a binding judicial admission if the statement was an unambiguous concession of a matter then at issue and was not made improvidently or unguardedly"].) Thus, the trial court's interpretation of section 4685, subdivision (c) does not provide a basis to vacate this portion of the OAH decision.

In sum, even assuming that Regional Center is correct that section 4685, subdivision (c) applies only to minors, the trial court erred in vacating the ALJ's decision directing Regional Center to conduct an OT/PT assessment with respect to Oakley's other requested modifications to the health care trailer.

*B. Regional Center is not entitled to further proceedings on its writ petition on remand*

In its respondent's brief in this court, Regional Center requested that, to the extent we reverse the trial court's decision, the matter should be remanded to the trial court for further proceedings with respect to the other arguments that it raised in its writ petition.

In our request for supplemental briefing, we directed Regional Center to address whether we should "direct the trial court to enter a new order denying the petition on the ground that Regional Center failed to adequately preserve in the administrative proceedings the issues that it raised in its petition for writ of mandate[.] " Other than arguing generally that the "issues raised in the writ [proceedings] were issues that arose from the [OAH] Decision," Regional Center did not present any argument in its supplemental brief with respect to whether it adequately preserved such contentions in the administrative proceedings, nor did it present any argument with respect to the merits of the alternative contentions that it raised in its writ petition. We have independently

reviewed each of the issues that Regional Center raised in its writ petition, and conclude that none provides any basis for further proceedings on remand. So as not to delay the proceedings further, we address Regional Center's alternative arguments below.

With respect to Regional Center's contention that the ALJ erred in ordering Regional Center to fund the ADA-compliant ramp and air conditioner without an assessment, Oakley requested this relief in her prehearing brief and she presented overwhelming evidence in support of her request at the hearing. (See pt. II.A(2)–(4), *ante*.) In contrast, Regional Center presented no convincing argument in its briefing in either the trial court or this court that the ALJ erred in ordering Regional Center to fund the purchase of this equipment.

With respect to Regional Center's contention that "regional centers are vested with the authority to determine appropriate services needed by an individual," Regional Center fails to demonstrate that the ALJ erred in resolving the conflict between Regional Center and Oakley concerning her requests pursuant to the statutorily mandated fair hearing request procedure. (See *Harbor Regional Center, supra*, 210 Cal.App.4th at p. 319 [" 'Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of [a regional center] which he or she believes to be . . . not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing' " before the OAH].)

With respect to Regional Center's complaints that the ALJ erred in ordering Regional Center to undertake an OT/PT assessment for various modifications to the health care trailer, Regional Center expressly conceded that it would undertake such an

assessment if the ALJ were to find its zoning argument to be without merit. (See pt. II.A.3, *ante*.) The ALJ rejected Regional Center's zoning argument and ordered Regional Center to undertake the requested assessment. Accordingly, Regional Center was not entitled to vacatur of a decision ordering Regional Center to undertake activity that it conceded it was willing to undertake.<sup>19</sup>

Accordingly, we conclude that Regional Center is not entitled to further proceedings on its writ petition on remand.

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<sup>19</sup> Nor is Regional Center entitled to have the OAH decision set aside due to a typographical error in the decision pertaining to whether Regional Center " 'ordinarily fund[s] extensive modifications to real property.' " (See fn. 11, *ante*.)

IV.

DISPOSITION

The order granting the petition for a writ of mandate is reversed, and the cause is remanded to the trial court with directions to enter a new order denying the petition.

Oakley shall recover her costs on appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.